

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SAVINGS BANK EMPLOYEES
RETIREMENT ASSOCIATION,

Plaintiff,

v.

EAST BOSTON SAVINGS BANK;
CAPE COD FIVE CENTS
SAVINGS BANK;
SOUTH SHORE SAVINGS
BANK; and WORONOCO
SAVINGS BANK,

Defendants.

CIVIL ACTION
NO. 04-11545 EFH

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S
AMENDED COMPLAINT**

Defendants East Boston Savings Bank, et al. ("EBSB"), hereby respond to the numbered paragraphs of plaintiff's ("SBERA's") Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Defendants admit the first sentence of paragraph 4. Defendants deny the last two sentences of paragraph 4.
5. Defendants admit that all of the Defendant Banks were aware of the resolution. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence of paragraph 5. Defendants deny the last sentence of paragraph 5.
6. Admitted.
7. Admitted.

8. Defendants admit SBERA has demanded fees as set forth in paragraph 8.
9. Defendants admit that they have not paid the fees.

Count I

10. The defendants reallege and incorporate by reference as if fully set forth herein their responses to the allegations contained in paragraphs 1 through 9.
11. Defendants deny the allegations set forth in paragraph 11.

Count II

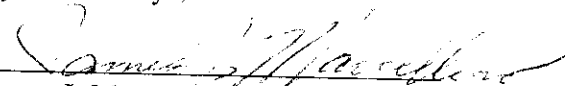
12. The defendants reallege and incorporate by reference as if fully set forth herein their responses to the allegations contained in paragraphs 1 through 11.
13. Defendants deny the allegations set forth in paragraph 13.
14. Defendants deny the allegations set forth in paragraph 14.

AFFIRMATIVE DEFENSES

1. Plaintiff's purported assessment violates applicable laws.
2. Plaintiff's purported assessment constitutes an impermissible penalty that does not reasonably estimate the potential damages resulting from defendants' withdrawal from the SBERA plan.
3. Plaintiff's claim for violation of Chapter 93A is improvidently pled.
4. Plaintiff's claims are barred, or limited by, the Employee Retirement Income Security Act (ERISA).

Respectfully submitted,

By its attorneys,


James J. Marcellino (BBO #318840)
Nicole Colby Longton (BB0#657478)
McDermott Will Emery, LLP
28 State Street
Boston, MA 02109
(617) 535-4085
(617) 535-3800 (Fax)

CERTIFICATION OF SERVICE
I hereby certify that a true copy of the above
document was served upon the attorney of record
for each other party by mail (by hand) on 3/16/05
